IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2416 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

ORIENTAL INSURANCE CO LTD - Appellant(s)
Versus
KOLI RANCHOD LIMBA & 5 - Defendant(s)

==========

Appearance :

MR SHALIN N MEHTA for Appellant(s) : 1,
MR HARESH H PATEL for Defendant(s) : 1,
None for Defendant(s) : 2 - 3,5 - 6.
MR RAJNI H MEHTA for Defendant(s) : 4,

==========

CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 10/01/2007

ORAL JUDGMENT

This is an appeal under section 173 of the Motor Vehicles Act, 1988 [hereinafter referred to as 'the Act'] filed by the Oriental Insurance

Company Ltd., to challenge judgment and award made by Motor Accident Claims Tribunal [Main], Rajkot District at Rajkot dated 17/4/1995 in M.A.C. Petition No. 115 of 1985. By the said award, the appellant is saddled with the liability to satisfy the award to the extent of 40%. The total amount that has been awarded to original claimant is Rs.50,000/- with interest at the rate of 12% p a from the date of application till the date of realization and the proportionate costs. The Tribunal has held that original opponents no. 1, 3, 6 and 5 are jointly and severally liable to pay the compensation. Appellant is original respondent no. 5.

2. According to the claimant, who is respondent no. 1 herein, he was driving Matador bearing registration No. GRP 4124 on 25/5/1984 on Ahmedabad-Porbandar Highway. Arvound 11-00 p m he reached near the bridge over Khokhaddadi. According to him, at that place in the middle of the road, a truck bearing registration No. GTG 2017 was parked without any signal. There were no reflectors nor any stone or barricade put encircling the truck. It is also averred that there was no-one to even caution him about the parking of the truck on the road. It is further stated that there was all of a sudden a puncture in the left wheel and his vehicle was dragged on the left side of the road. Further he was dazed by the lights of the on-coming vehicles. As a result of the same, he could not see ahead of him and he rammed into the stationary truck. It is the say of the claimant that he received serious injuries which

resulted into permanent partial disablement. He, therefore, filed claim initially for Rs.50,000/- but subsequently enhanced it to Rs.75,000/-.

2.1. The claimant joined in the proceedings, the truck driver, its owner and its insurance company, namely the New India Assurance Co. Ltd., Jamnagar and also his employer and the present appellant, which was the insurer of the Matador which the claimant was driving. The employer of the claimant and appellant, namely opponents no. 4 and 5 of the claim petition, resisted the claim by filing written statement at Exh. 19; whereas original opponents no. 1 and 2, namely the driver and owner of the truck filed written statement at Exh. 24. The insurer of the truck, namely New India Assurance Company filed its written statement at Exh. 42. Present appellant filed written statement at Exh. 57. All the opponents of the original petition denied the averments of the claimant. According to the appellant, the entire negligence was that of the driver of the truck and, therefore, appellant was not liable to pay any compensation to the claimant. In the alternative it was submitted that since the claimant himself was negligent, no compensation could be awarded to him.

2.2. At the hearing, oral as well as documentary evidence was produced. The Tribunal, on the basis of the same, arrived at a conclusion that so far as the truck was concerned, its driver was negligent to the extent of 60%; whereas the driver of the matador i.e., original claimant was

negligent to the extent of 40%. The Tribunal absolved the owner of the matador i.e., employer of the claimant from his liability to satisfy the award, but held that since under the policy driver's risk was covered, the appellant was required to satisfy the award. Hence, this appeal.

3. I have heard Mr. Shalin Mehta, learned advocate for the appellant, Mr. HH Patel, learned advocate for respondents no. 1, 2, 3, 5 and 6 and Mr. Rajni H Mehta, learned advocate for respondent no. 4. Mr. Shalin Mehta has submitted that the conclusion of the Tribunal on the issue of negligence is not proper. He has drawn my attention to the material on record to submit that the claimant himself was negligent and, therefore, no compensation can be awarded to him. He has further submitted that when the owner of the vehicle is absolved of his liability to satisfy the award, the insurance company cannot be asked to satisfy the award. He has lastly submitted that the claimant has approached the Claims Tribunal under the provisions of the Act, but to recover the amount claimed in the proceedings, he has to approach the forum provided under the Workmen's Compensation Act, namely the Commissioner. In support of his submission, he has placed reliance on the decision rendered by the Division Bench of this Court in the case of United India Insurance Co. Ltd. V/s. Jagatsinh Valsinh and others reported in 1986 G.L.H. At page 573.

3.1. As against that, Mr. Patel has supported the judgment of the

Tribunal. Mr. Rajni Mehta, learned advocate appearing for the New India Assurance Company has submitted that when the Tribunal has held original claimant negligent to the extent of 40%, the appellant being Insurance Company cannot challenge the award on the ground of negligence. He has further submitted that assuming that there was negligence on the part of the claimant, he was injured in the course of his employment and while discharging duty and, therefore, he was entitled to receive compensation under the provisions of the Workmen's Compensation Act [hereinafter referred to as 'the W C Act'] irrespective of the issue of negligence be first decided.

4. I have carefully considered the submissions made by the learned advocates appearing for the parties. I have also perused record of the case. So far the submissions of Mr. Shalin Mehta on the aspects of negligence of the original claimant are concerned, they cannot be considered solely because as an insurance company, the appellant has no right to agitate such question. So far the submission of Mr. Shalin Mehta with regard to exoneration of respondent no. 5 is concerned, it is required to be accepted because under the provisions of the W C Act the employer is liable to pay compensation to the concerned employee irrespective of the fact that whether the injuries were caused on account of his own or some-one else's negligence. Unless he is held liable, the liability on the insurance company, namely the appellant cannot be fastened.

5. The next question that is to be considered is whether the claimant could have been awarded compensation under the provisions of the Act for his own tortuous act. I have perused the record of the case including the policies of the vehicles involved in the accident. So far as policy of the matador is concerned, it is produced with pursis at Exh. 48 and it is marked as Exh. 49/1. It shows that for driver and cleaner additional premium is paid and coverage under Imt. 16 has been provided. The claimant being the employee of respondent no. 5 and claimant has received injuries during course of his employment, respondent no. 5 was liable to pay compensation under the provisions of the WC Act. So far as the Act is concerned, the insurance company is liable to satisfy the liability to the extent it arises under the WC Act unless wider coverage is provided by charging additional premium. Therefore, it is obvious that irrespective of any negligence on any-body's part, the claimant is entitled to receive compensation under the provisions of the W C Act. The said limit is enlarged or extended by the insurance company i.e., appellant by charging additional premium. Hence, had the proceedings been filed under the provisions of the WC Act, the appellant would have been liable to satisfy the award that may have been made by the WC Commissioner. However, in the present case, the petition is preferred under the Act. Section 167 of the Act provides for option and the concerned claimant could either approach the forum under the WC Act or under the Claims Tribunal created under the provisions of the Act. However, without going deep into the merits of the said question,

when the liability of the insurance company is arising under the W C Act, which can even be seen from the ratio laid down by the Division Bench in the decision cited by Mr. Shalin Mehta, it will not be fair to the claimant to drive him again to the forum under the W C Act to file fresh proceedings after 25 years of the accident and that too for a meagre amount of Rs.20,000/-. In view of the same, the submission of Mr. Shalin Mehta cannot be accepted. This appeal has, therefore, no merits and it is dismissed.

[Akshay H Mehta, J.]

* Pansala.